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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAL MOR and EREL TAL

Appeal 2007-4278
Application 10/608,309
Technology Center 2800

Decided: May 28, 2008

Before ANITA PELLMAN GROSS, ROBERT E. NAPPI, and JOHN A. JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 8, and 15. Claims 2, 3, 5-7, 9, 10, 12-14, 19, and 20 have been indicated as containing allowable subject matter (Ans. 2). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants invented a method and apparatus for controlling the time the display of a portable wireless communication device is illuminated. Specifically, a processor determines an illumination time parameter. This parameter is based on at least one of the following: the length of the message, the number of lines of the display screen required to display the message, and the type of message displayed. The amount of time the device's display will be illuminated depends on the illumination time parameter and preserves battery life.¹ Claim 1 is illustrative:

1. A method for controlling an illumination of a display screen in portable wireless communication device comprising:

illuminating the display screen;

determining at least one illumination time parameter corresponding to a message displayed on the display screen, wherein the at least one illumination time parameter is based on at least one of a length of the message, a number of lines of the display screen required to display the message, and a type of message to be displayed; and

maintaining the illumination of the display screen for a period of time that is based on the at least one illumination time parameter.

The Examiner relies on the following prior art reference to show unpatentability:

Lipp

US 5,398,022

Mar. 14, 1995

¹ See generally Spec. 1:7-9, 2:19-3:18, and 7:14-10:6.

Claims 1, 8, and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lipp.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs² and the Answer³ for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments, which Appellants could have made but did not make in the Briefs, have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

OPINION

We consider the Examiner's rejection of claims 1, 8, and 15 under 35 U.S.C. § 102(b) as being anticipated by Lipp. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Each claim on appeal will be addressed separately.

Claim 1

Regarding independent claim 1, the Examiner has indicated how the claimed invention is fully met by the disclosure of Lipp (Ans. 4). Appellants dispute that Lipp teaches the step of determining at least one illumination time parameter corresponding to a message displayed on the display screen, wherein the at least one illumination time parameter is based on at least one

² We refer to the most recent Appeal Brief filed November 8, 2006, and the most recent Reply Brief filed March 26, 2007, throughout this opinion.

³ We refer to the most recent Examiner's Answer mailed April 16, 2007, throughout this opinion.

of a length of the message, a number of lines of the display screen required to display the message, and a type of message to be displayed (App. Br. 6; Reply Br. 5-6). Appellants argue that the illumination time period in Lipp is fixed and not related to the type of message to be displayed (App. Br. 6-7). Appellants also indicate that the cited discussions in Lipp address displaying the message and not illumination (Reply Br. 5-6).

The issue before us, then, is whether Lipp discloses the step of determining at least one illumination time parameter corresponding to a message displayed on the display screen based on at least one of the length of the message, the number of lines of the display screen required to display the message, and the type of the message to be displayed. For the following reasons, we find that it does.

Claim 1 recites, in pertinent part, “determining at least one illumination time parameter corresponding to a message displayed on the display screen, wherein the at least one illumination time parameter is based on *at least one of* a length of the message, a number of lines of the display screen required to display the message, and a type of message to be displayed” (emphasis added). Thus, the at least one illumination time parameter can be based on: (1) the length of the message; (2) the number of lines of the display screen required to display the message; *or* (3) the type of the message to be displayed.

Lipp discloses a method and device for illuminating the display of a pager (Lipp, col. 1, ll. 5-9; Figs. 2 and 5). Lipp further discloses the steps of illuminating and autoscrolling occur simultaneously and in tandem (Lipp, col. 4, ll. 38-40, col. 5, ll. 6-55, and col. 7, ll. 18-23; Figs. 2-4). Given this disclosure, one arrangement in Lipp would include illuminating the display

by (1) holding down the switch for a predetermined amount of time (Fig. 2, Steps 104, 108, 110); (2) maintaining illumination for a time period during the steps of autoscrolling through the message page by page (Fig. 3, Steps 120, 122, 130, 134, 138, 140, 142, 144, 146); and then (3) automatically turning the light off when the last page has been displayed (Fig. 4, Steps 160-162, 166, 168).

The above discussion of Lipp further illustrates the disclosed method must determine an illumination time parameter corresponding to a message displayed on the display screen based on the length of the message and maintaining the illumination for a period of time based on the length of the message (Lipp, col. 3, ll. 14-17 and 41-51, col. 4, ll. 24-27, 47-54, col. 5, l. 6 - col. 6, l. 39, and col. 7, ll. 18-45; Figs. 2-4). For example, a message that is five pages will be illuminated for forty-two (42) seconds based on each of the five pages being displayed and illuminated for a predetermined autoscroll time interval of eight (8) seconds and the two (2) second timer after the last page of the message is displayed (Lipp, col. 5, ll. 31-37 and col. 7, ll. 38-40; Figs. 3-4). Using the same values, a message that is ten pages will be illuminated for eighty-two (82) seconds. Thus, the above illustrations show Lipp discloses an embodiment where the illumination time parameter for the message to be displayed is based on the length of the message and the illumination is maintained for a period of time based on this illumination time parameter as claimed.

Appellants argue that the time the message in Lipp is illuminated is fixed and not related to the message being displayed (App. Br. 6-7; Reply Br. 5). We disagree. As discussed above, Lipp discloses the time the display is illuminated depends on the length of the message being displayed.

Furthermore, regarding the time of illumination being fixed, we find this discussion is not commensurate with the scope of claim 1. Claim 1 requires maintaining the illumination on the display for a time period based on an illumination time parameter, which is, in turn, based on at least one of a length of a message, a number of lines of the display screen required to display the message, and a type of message to be displayed. Claim 1 does not exclude a fixed time parameter. In fact, the Specification discloses fixed time periods for illuminating the display depending on the type of message received (Spec. 8:1-7). Nonetheless, the above examples also show that the time of illumination in Lipp will vary depending on the length of the message.

Appellants also indicate that illumination in Lipp is in response to user actuation and is not related to the message being displayed (App. Br. 6; Reply Br. 5-6). As discussed above, Lipp discloses the time the display is illuminated does relate to the length of the message. With respect to the user actuating illumination of the display, we find this discussion is not commensurate with the scope of claim 1. Claim 1 does not exclude a user from actuating or performing the initial illumination step. Moreover, the above examples demonstrate the steps of determining at least one illumination time parameter corresponding to a message displayed on the display screen, wherein the at least one illumination time parameter is based on the length of the message and maintaining the illumination of the display screen for a period of time based on the length of the message are performed by a processor (Lipp, col. 3, ll. 41-42 and col. 7, ll. 35-40; Figs. 1-4).

For the foregoing reasons, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 1. Accordingly, we will sustain the Examiner's rejection of that claim.

Claim 8

Claim 8 recites an apparatus for controlling the illumination of a display in a portable wireless communication device comprising a processor that:

determines at least one illumination time parameter corresponding to a message displayed on the display screen, wherein the at least one illumination time parameter is based on at least one of a length of the message, a number of lines of the display screen required to display the message, and a type of message to be displayed and maintains a coupling of power to the light source for a period of time that is based on the at least one illumination time parameter.

The Examiner has indicated how the claimed invention is fully met by Lipp (Ans. 4-5). Appellants argue that Lipp fails to disclose such a processor and repeats the discussion that the illumination time is based on user actuation and not the claimed illumination time parameter (App. Br. 7-8; Reply Br. 6-7).

Our previous discussions regarding Lipp apply equally to this argument. Additionally, as previously stated, Lipp discloses a processor 40 that controls the period of time the display is illuminated (Lipp, col. 3, ll. 41-42 and col. 7, ll. 35-40; Figs. 1-4). Thus, while the user in Lipp may initiate the illumination of the display (Lipp, col. 3, ll. 56-59), the processor determines the illumination time parameter corresponding to a message displayed on the display screen based on the length of the message, and

maintains a coupling of power to the light source for a time period based on the length of the message.

For the foregoing reasons, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 8. Accordingly, we will sustain the Examiner's rejection of that claim.

Claim 15

Although Appellants nominally argue the patentability of claim 15 based on its dependence from claim 8 (App. Br. 8), we are unpersuaded by this argument for the reasons previously discussed with respect to independent claim 8. Additionally, Appellants' argument for withdrawal of the objection for claim 15 is directed to a petitionable matter -- not an appealable matter -- and is therefore not before us.⁴ Nevertheless, we note that the Examiner addressed the objection in question on Pages 3 and 4 of the Examiner's Answer and Page 2 of the Final Rejection mailed September 7, 2005.

For the foregoing reasons, we sustain the Examiner's rejection of claim 15.

DECISION

The decision of the Examiner to reject claims 1, 8, and 15 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

⁴ See MPEP § 706.01 ("[T]he Board will not hear or decide issues pertaining to objections and formal matters which are not properly before the Board."); *see also* MPEP § 1201 ("The Board will not ordinarily hear a question that should be decided by the Director on petition....").

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AFFIRMED

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